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FEDERAL COMMUNICATIONS COMMISSION
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EX PARTE

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: CC Docket No. 01-277

No. of Copies rec'd 0+2
List A B C D E

Dear Ms. Salas:

The purpose of this ex parte is to provide the Commission with a greater understanding of the impact that the deficiencies in BellSouth's OSS are having on Birch's willingness and ability to provide integrated service offerings and to transition to a facilities-based network. Birch's business plan calls for using UNE-P as a stepping stone to achieve its long run objective of providing integrated service offerings over Birch's own facilities. In Texas, Oklahoma, Kansas and Missouri, Birch is already providing integrated service offerings over its own facilities. Currently, in Georgia, Birch offers only simple POTS through UNE-P and is in no position to transition to a facilities-based strategy as long as BellSouth's OSS continues to perform as poorly as it currently does.

Birch believes that in order to survive and be an effective competitor it is critical that it become a facilities-based provider. This is the strategy it is pursuing in Southwestern Bell's region and the strategy that it must follow in Georgia. Birch's strategy of transitioning to a facilities-based network in the Southwestern Bell region is proceeding as planned. Currently, Birch has Lucent 5E circuit switches in Kansas City, St. Louis and Wichita serving customers at the DS1-size and above. Birch has an ATM backbone network in Texas, Missouri, Kansas and Oklahoma and has a DSL network with approximately 160 collocations in Southwestern Bell central offices. Birch provides DSL in Texas, Missouri, Kansas and Oklahoma. Moreover, Birch is testing soft-switches in the laboratory and will deploy these switches in the near future in order to be able to carry voice as well as data over its DSL network.

Birch has been able to transition to a facilities-based network in the Southwestern Bell region because of the performance of Southwestern Bell's OSS and because of

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Southwestern Bell's willingness to solve problems as they arise. Flow-through rates[1] and internal service order error rates[2] for Southwestern Bell are both much better than for BellSouth. A combination of a high degree of automation and accurate handling of partially-mechanized orders has given Birch confidence that Southwestern Bell can process numerous complex orders quickly and accurately. As a result, Birch believes that at least in Southwestern Bell's region, Birch can transition to a facilities-based network and provide its customers more complex services.[3] However, in Georgia, BellSouth's flow-through rate and internal service error rates on Birch's simplistic orders are far below the established benchmarks.[4] Birch cannot even think of transitioning to a facilities-based strategy in the BellSouth region.

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[1] An order flows through if it is processed by an RBOC without any manual intervention. Orders submitted by CLECs electronically and processed by an RBOC at least in part manually are said to be partially mechanized and are not counted as flow through orders.

[2] An internal service order error is a mistake made by BellSouth when it processes an order. If an order processed by BellSouth's systems is different than the order as it was entered by the CLEC, BellSouth is considered to have made an internal service order error. The internal service order error rate for orders that flow through is less than 1% since such orders are processed entirely mechanically and machines rarely make mistakes. On the other hand, when an order does not flow through and is instead processed by human beings, BellSouth makes errors frequently.

[3] An example of a type of complex service that Birch offers its customers in the Southwestern Bell region but dare not offer in BellSouth's region is DSL.

[4] BellSouth is missing the flow-through benchmark even though the benchmark, which is only 85%, is lower than that faced by Verizon and SBC. Verizon's flow-through benchmark is 95% and SBC's benchmark is parity with retail. According to BellSouth's own reported results, BellSouth's flow-through rate for Birch in Georgia for October was 68.91% while for all CLECs region wide it was 76.75% for UNE orders.

BellSouth is also missing the 95% benchmark for internal service order accuracy. Birch estimates that in October, 30% of Birch's orders that were manually handled by BellSouth were inaccurate because of errors introduced by BellSouth. Birch reply comments at 11. Interestingly, BellSouth estimates that service order accuracy for UNEs non-design for all CLECs for October is 90.48%.

There are at least three factors which suggest that the Commission should not place much weight on the fact that BellSouth came close to meeting the benchmark in October. First, in May, BellSouth estimated the service order accuracy rate for UNE non-design to be 93.05% only to have service order accuracy for UNE non-design decrease to 76.92% in June, 70.69% in July and 64.36% in August. Thus, Birch's future performance may slide just as it did the last time BellSouth almost hit the benchmark. Second, BellSouth faces no penalties whatsoever if it does not meet the benchmark (unlike in Texas where Southwestern Bell does face penalties). Thus, BellSouth could backslide with impunity once its application is granted. Third, BellSouth's claim that its internal service order accuracy rate for UNE non-design for October was 90.48% is not entirely credible for at least two reasons. First, BellSouth's service order accuracy rate for UNE non-design is (footnote continued on next page)

As discussed above in footnotes 1 and 2, a low flow-through rate implies that many orders will be processed with at least some manual intervention and the high percentage of internal service order errors for partially mechanized orders, in turn, implies that the BellSouth employees that process orders manually often make mistakes. These two facts in combination pose a serious problem since they mean that a significant percentage of all of Birch's orders have internal service order errors. The problem is especially large for Birch because of the nature of Birch's business which is to provide telecommunications services to small business and residential customers. The high volume of orders submitted by Birch means that it is critical that the orders be processed accurately.

As explained in Birch's reply comments, Birch's response to these deficiencies in BellSouth's OSS has been to hire additional employees to catch and correct BellSouth's internal service order errors before they become provisioning errors that affect customers.[5] However, correcting BellSouth errors is only effective up to a point. While correcting such errors may be feasible with the current flow through and internal service order error rates, it becomes less feasible as the flow-through and internal service order error rates worsen, as they surely would if Birch ordered more complex service offerings from BellSouth.

As Birch explained in detail in its reply comments, correcting a BellSouth error even for simple POTS is often a time consuming and difficult process.[6] Birch lacks confidence that it will be able to correct the large number of BellSouth errors that would inevitably follow if Birch submitted numerous complex orders. Moreover, even if it were possible for Birch to correct the numerous BellSouth errors from processing complex orders, Birch would still be hesitant to move up market because the cost to Birch of hiring additional employees to catch and correct BellSouth errors may make the marketing of complex services a money losing proposition.

In sum, the deficiencies with BellSouth's OSS have affected Birch in two significant ways. First, Birch has been forced to devote significant resources to correcting BellSouth errors, thus increasing Birch's costs and making the marketing of even basic service

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calculated from a sample of orders that BellSouth has admitted is so small as to be statistically insignificant. *See* BellSouth's December 10 *ex parte* at 4. Also, BellSouth's results are inconsistent with Birch's findings, in that for Birch's orders, the rate was closer to 70%. Birch and other CLECs cannot test the accuracy of BellSouth's estimate for service order accuracy since Birch and other CLECs do not have the underlying data that BellSouth used to derive BellSouth's estimate. Thus, neither Birch nor any other third party can verify BellSouth's results for internal service order accuracy. When Birch has had the underlying data for other performance measurements, such as flow through, it has been able to catch BellSouth mistakes.

[5] Birch reply comments at 12-15.

[6] *Id.*

offerings in Georgia less attractive. Second, Birch is unwilling to transition to a facilities-based network and provide more complex service offerings as long as BellSouth has difficulty processing even simple POTS orders, and as long as BellSouth is unable to effectively address the underlying problems. BellSouth's Section 271 application should not be granted until BellSouth's performance with respect to its OSS improves significantly.

Sincerely,

Robert Felgar

Robert Felgar

cc: Chairman Michael Powell
Commissioner Michael Copps
Commissioner Kathleen Abernathy
Commissioner Kevin Martin
Jordan Goldstein
Matthew Brill
Kyle Dixon
Monica Desai
Dorothy Attwood
Jessica Rosenworcel
Renee Crittendon